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Philosophy and Law: An Interpretation of Plato's *Minos*

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Abstract

Plato's *Minos* presents a twofold argument. In part it is a facile defense of law directed at a typical Athenian citizen. On another level it is a sophisticated teaching that thoroughly examines the question what is law for the would-be philosopher or student of Socrates. These arguments are made in three parts. First, it becomes clear that Socrates' interlocutor has been influenced or corrupted by the teachings of sophists. Second, Socrates attempts to reform the interlocutors' opinion of law by suggesting there is a science of law. Finally, Socrates argues that present day Greek laws are derived from the oldest Greek laws, which were revealed and taught by Zeus himself. With this twofold argument Socrates counters his interlocutor's sophists' influenced opinion of law and reveals to the careful reader the complexity of the question: what is law?

Keywords

Plato – Minos – Philosophy – Law

Until recently the *Minos* had been neglected by most scholars and not considered of much importance for understanding Plato's political philosophy. This was due in part to arguments that it is not an authentic Platonic dialogue. W.R.M. Lamb makes this argument in his introduction to the *Minos* in the Loeb edition, because 'the sequence of the thought is awkward and none too clear'.¹

¹ Loeb Classical Library, Vol. XII (Cambridge: Harvard University Press, 1932; Reprinted 1993), p. 231.

Generally, such arguments are based on comparing the text of the *Minos* with other, better known and undisputed Platonic works and arguing that the Greek manuscripts of the *Minos* are too stylistically different from the better known Platonic dialogues.

Other scholars have contended that the *Minos* is Plato's genuine work but argue that it is not of major importance, because it is an earlier, immature work, discarded portion or draft of one of Plato's longer dialogues like the *Republic* or *Laws*. For example, Glen Morrow in his study of Plato's *Laws* argues on stylistic and philological grounds that the *Minos* is sufficiently similar to both the *Laws* and *Statesman* to be a genuine Platonic work.² However, Marrow considers it a sort of draft or earlier version of one of the 'later' dialogues and consequently not of major importance for understanding Plato's thought.

Yet, recently the dialogue has gained support among scholars as not only a genuine Platonic dialogue but a mature work on par with the *Laws* and consequently worthy of serious consideration for understanding Plato's thoughts on law and his political philosophy in general.³ The *Minos* is the only Platonic dialogue where the question what is law is specifically addressed and answered, which being a 'what is' question is characteristically Socratic.⁴ In fact, curiously, the first and last words of the dialogue respectively, in Greek, are 'law (*nomos*)' and 'has been examined (*eskephthai*)'. Consequently, although, as many scholars have argued, the *Minos* invites one to turn to Plato's longest work the *Laws*, it seems to constitute a sort of whole onto itself and be of seminal importance for understanding how Plato understood law.

2 Glen Marrow, *Plato's Cretan City: A Historical Interpretation of the Laws* (New Jersey: Princeton University Press, 1960), pp. 36, 35, 37-8. Other scholars who make this type of argument are:

George Grote, *Plato and the Other Companions of Socrates*, Vol. 1 (London: Murray, 1865), p. 414; Paul Friedlander, *Platon*, Vol. 1 (Berlin: Walter de Gruyter, 1928), p. 47; Paul Shorey, *What Plato Said* (Chicago: University of Chicago Press, 1933), p. 145. Of these, polis, *The Journal for Ancient Greek Political Thought* 32 (2015) 53-72

Grote is the only one who took the dialogue seriously enough to comment on it separately. He considered it an 'inferior' dialogue, but nonetheless genuinely Socratic and consequently of significance for understanding Plato's philosophy (pp. 414-5).

- 3 For an overview of the controversy regarding the authenticity of the *Minos* and its place and significance in Plato's oeuvre see Mark Lutz, 'The *Minos* and the Socratic Examination of Law', *American Journal of Political Science*, 54.4 (2010), pp. 988-1002, pp. 990-993.
- 4 Leo Strauss, 'On Plato's *Minos*', in *Liberalism: Ancient and Modern* (Chicago: University of Chicago Press, 1968), p. 65; Seth Benardete, *Plato's Laws: The Discovery of Being* (Chicago: University of Chicago Press, 2000), p. 2.

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Introduction

What is law? Answers to this question that a typical citizen of a liberal democracy are likely to give pose problems for civic virtue and the rule of law. For example, is law just the preferences of the ruling class or representatives, the values of a country, or simply whatever is legislated? If law is just the opinions, values, or preferences of one group as opposed to another, why should a citizen take law seriously unless those values or preferences happen to be those advocated by the citizen? If citizens do not value law, why will they take their responsibilities as a citizen seriously? What incentive do they have to be good citizens? Further, if law is simply a value or just an opinion as opposed to something grounded in truth, how does one distinguish between good and bad laws? Rather, such a view of law tends to dismiss the question of good and bad laws and therewith the question of good and bad government.

The question what is law and the problems arrived at from a value neutral, value free, or positive understanding of law are the theme of the *Minos*.⁵ Socrates examines the opinion of a nameless companion who professes a positive definition of law suggesting that in some sense he has been influenced by the teachings of sophists about the distinction between nature and convention that call into question allegiance to the city and its laws and gods. This distinction between nature and convention is examined in many Platonic dialogues, e.g. the arguments made by Thrasymachus in book one the *Republic* and those of Callicles in the *Gorgias*.⁶

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Consequently, it should not be surprising that this is an unstated but underlying theme of the *Minos*.⁷ Socrates proceeds to try

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- 5 Arguably, this is not so much a problem for modern democracies which are based on a different understanding of freedom that allows for individual rights and a private sphere. However, the ancient Greeks were much more civic minded. Aristotle defines a citizen as one who participates in the offices and decisions of the city (*Politics* 1275b18), as opposed to mere voting rights.
 - 6 For discussions of the distinction between nature (*phusis*) and convention (*nomos*) in Greek literature of the fourth and fifth centuries BC see W.K.C. Guthrie, *A History of Greek Philosophy* 3 (Cambridge: Cambridge University Press, 1969), pp. 55-134; F. Heinemann, *Nomos und Physis* (Basel: F. Reinhardt Verlag, 1945), pp. 115-65; and G.B. Kerford, *The Sophistic Movement* (Cambridge: Cambridge University Press, 1981), pp. 112-30.
 - 7 Of recent interpretations of the *Minos* which have been offered, e.g. Mark Lutz, 'The *Minos* and the Socratic Examination of Law'; T. Lindberg, 'The Oldest Law: Rediscovering the *Minos*', *Telos* (2007), pp. 43-68; David Mulroy, 'The Subtle Artistry of the *Minos*', *Transactions of the American Philological Association*, 137 (2007), pp. 115-31; and Bradely Lewis, 'Plato's *Minos*: The Political and Philosophical Context of the Problem of Natural Right', *The Review of Metaphysics*, 60 (2006), pp. 17-53, none have approached the dialogue with this consideration

and reform the companion's understanding of law by proposing his own definition and understanding and then discussing the most ancient Greek legislator, Minos.

In one sense the nameless companion with whom Socrates converses seems to refer to a typical Athenian citizen, which makes the dialogue a facile defense of law. Yet, in another and more important way the nameless companion seems to refer to one of Socrates' students, perhaps even Plato himself as a young man.⁸ In this light the dialogue reveals a more sophisticated teaching and thorough examination of the question what is law, which at the same time explores the dangers to law from arguments by sophists and pre-Socratics to which democratic regimes like Athens were susceptible.⁹

The Minos

Like recent articles, e.g. Lewis and Lutz, my method of explaining the dialogue is the interpretive essay.¹⁰ Structurally, the *Minos* may be divided into three main sections. In the first it becomes evident that the companion's understanding of law has been influenced by the teachings of sophists (313a1-314c4). The second is Socrates' attempt to moderate or reform the companion's understanding of law by arguing there is a science of law and proposing his own definition (314c5-318a9). In the last section Socrates discusses the legendary legislator, king Minos (318b1-321d10).

Each of these three main sections can in turn be divided into three parts or subsections. The first consists of three definitions of law. The first definition is

foremost in mind. Lutz, in fact, argues somewhat contrariwise that 'in the course of the dialogue Socrates affirms that his comrade respects law deeply (p. 992)'.

- 8 Cf. Christopher Bruell, 'Minos, or About Law' in *On the Socratic Education: An Introduction to the Shorter Platonic Dialogues* (Maryland: Rowman and Littlefield, 1999) p. 7, §1. The only thing we know about the companion for sure is that he is Athenian. However, the word *hetairos*, usually translated as companion or comrade, can also mean a pupil or disciple. Xenophon uses it specifically to refer the students of Socrates (*Memorabilia* 2.8.1; cf. Aristotle *Politics* 1274a28). While this ambiguity should be kept in mind, I shall refer to him throughout the article as the companion.
- 9 Linberg remarks, 'The comrade in the *Minos* is nameless. Why? Perhaps because the law applies to any given person and all such persons ('The Oldest Law: Rediscovering the *Minos*', p. 62)'.
- 10 For reasons as to why this approach is particularly appropriate for the *Minos* see Lewis, 'Plato's *Minos*: The Political and Philosophical Context of the Problem of Natural Right', p. 20.

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that law is the things legislated (313b6). The second defines law as the opinion of the city (314b10-12). The third definition, which is the only one offered by Socrates, is that law 'wants to be a discovery of what is' (315a2).¹¹ The central section of the dialogue explains the meaning of law. The first part is about the relationship between law and justice. The second is about the various aims of law whereby the highest end is the noble. In the third polis, *The Journal for Ancient Greek Political Thought* 32 (2015) 53-72

Socrates compares law to arts directed at achieving harmony and measure. The last section of the dialogue is a discussion of the legislator. The first part discusses the superiority of ancient legislators to modern. The second part discusses the most ancient legislator Minos. The final part discusses the purpose of the legislator, care of the soul. Thus, in all the dialogue contains nine parts. This way of dividing the dialogue, i.e. into nine parts, seems to be suggested by Plato himself to the extent that it corresponds to the intervals at which Socrates says Minos visited Zeus to be instructed: ‘Consequently, Minos frequented the cave of Zeus every nine years (319e7)’.

The Greek word *nomos* is the first word and overarching theme of the dialogue. It is usually translated as law, custom, or convention. However, none of these terms conveys the sense of awe, reverence and the sacred that the Greek word conveys. Since the lack of reverence and awe in the companion’s understanding of law is symptomatic of the inadequacy of his definition, these translations obscure an important element of the dialogue. *Nomos* originally meant a musical mode or chord or more generally a song in honor of the gods.¹² Accented on the last syllable, it originally referred to a pasture or grazing land.¹³ From this meaning, it has connotations of equity and fairness, i.e. the equitable or fair distribution of grazing land. Therefore, as it was understood in Attic Greek in Plato’s time *nomos* has three important connotations: that it is fair, that it is sacred, and that it is our own or what distinguishes us from other people.

The problem introduced at the outset of the dialogue is that the companion has come to understand law as not sacred, essentially arbitrary, and therefore not fundamentally different from other laws (*nomoi*). This suggests that the companion has been taught or influenced by the teachings of sophists, as I have suggested. The definition he gives of law, ‘What else would law be other than the things legislated (313b7)?’ is reminiscent of Thrasymachus’ definition

11 This and all subsequent translations from the Greek are my own from Plato. *Platonis Opera*, ed. John Burnet (Oxford: Oxford University Press, 1903).

12 Herodotus 1.24. Plato occasionally uses the word in this sense, e.g. *Laws* 700d.

13 Homer *Iliad* II.475, VII.511; *Odyssey* VIII.217, IX.159.

of justice in book one of the *Republic* (338c) in respect to its value neutrality.¹⁴ It also reminds us of Calicles’ distinction between law (*nomos*) and nature (*phusis*) in the *Gorgias* (482e). In the latter part of the *Minos* Socrates refers to Zeus as a sophist (*sophistēs*) twice (91c3 & 91c6), as opposed to wise (*sophos*). Yet, the companion raises no objection despite the fact that sophists were often viewed with suspicion.¹⁵ Finally, Socrates himself initiates the conversation, which he does not do in many dialogues. When he does so, he often wishes to examine or expose the problems, if not the dangers, of the views of those he talks with. For example in the *Gorgias* he examines Gorgias’ understanding of rhetoric. In the *Hippias Major* he examines Hippias’ understanding of the noble. In the *Lovers* he examines young men’s understanding of philosophy. Socrates asks the nameless companion without polis, *The Journal for Ancient Greek Political Thought* 32 (2015) 53-72

any prelude: ‘What is law?’ (Or literally, ‘Law, for us, is what?’). It is likely that Socrates is already acquainted with the companion and has become aware that his opinion about law has been influenced by the teachings of sophists.

Socrates’ initial question is ambiguous, and therefore perplexing, as commentators have noted. The question could mean what are the particular laws of Athens as opposed to those of another city. Or it could mean what does law in general mean for Athenians as opposed to Spartans or barbarians. If this is what Socrates is asking, it implies law as such differs from city to city: there are different conceptions of law just as there are fundamentally different conceptions of the divine for different cities.

Since Socrates uses the singular, law, as opposed to the plural, laws, it seems he means to ask about law in general, not particular laws. This would fit the abstract character of the dialogue as a whole, which is conspicuously devoid of narrative details. However, while Socrates may mean to ask mainly about law in general, can one really understand and intelligently discuss law as such without knowledge of, or reference to, particular laws? Is law something that can readily be distinguished or separated into an abstract form on the one hand and a particular instance on the other like the idea of a number? Number can be understood in the abstract, e.g. the number two, or the particular, e.g. these two men. If law is like number, then there would be a science of law just as there is of numbers. Socrates will later argue that there is a science of law, but the fact that it is not as evident that law can be readily understood in the abstract like number suggests that a science of law is problematic.

14 Bruell, ‘*Minos*, or About Law’, p. 9, §4.

15 Cf. *Meno* 91c. Socrates himself addresses the charge that he is a sophist and teacher of rhetoric in the *Apology* (19d8-e9).

To clarify his question Socrates compares law to stone and gold asking whether gold differs from gold or stone from stone in respect to being gold or stone (313a9-b2). These analogies prove more perplexing than clarifying when examined, as commentators have observed.¹⁶ While one stone does not differ from another in respect to being stone, it does differ to the extent that there are different types of stone. Not only does gold not differ from gold with respect to being gold, but neither are there different types of gold: gold is an element. Thus, one wonders is law like gold or stone or in some ways like both? Are all laws in all places essentially the same like gold, or do laws vary quite a bit from place to place, like stone, while still nonetheless being laws?

Further, although stone is a sort of genus, gold is a species: a species of the genus stone in one sense. Gold is a type of stone. In fact, it is a special type of stone: a stone particularly valued by humans, i.e. valuable by *nomos*. Beasts and gods, presumably, have no use for gold.¹⁷ Thus, one wonders is law like gold, i.e. something only valued by human convention? If so, could there even be natural, or supernatural, support for law?

Additionally, although gold could be considered just a type of stone, it can be fashioned into virtually anything, e.g. gold jewelry, gold cups, even images of gods. Gold as gold is amorphous. In a certain sense, it is neither a genus nor a species but *sui generis*. Stone, however, is both in one sense a genus and in another a species. Although there are different types of stone (e.g. granite, marble) stone itself is a type of earth. If law is like gold in this sense, it would seem to be something fundamentally unique and *sui generis*.

Thus, Socrates' clarification of his question is really an indication of the complexity of the question.¹⁸ Is law something like stone or gold? Or is it like both? Law seems to be as common as stone, since all cities have laws, but as valuable as gold, since each city values its own laws and law itself is of great value for human beings as such.¹⁹ Also, to an extent all natural things are governed by laws in the sense of characteristic behavior peculiar to them. To this extent law is as common as stone. However, in another way law is something

16 For other discussions of these analogies see Lutz, 'The *Minos* and the Socratic Examination of Law', p. 993; Lewis, 'Plato's *Minos*: The Political and Philosophical Context of the Problem of Natural Right', pp. 22-3; and Strauss, 'On the *Minos*', p. 66.

- 17 Aristotle comments that mules would rather have garbage than gold (*Nicomachean Ethics* 1176a6).
- 18 Cf. Grote, *Plato and the Other Companions of Socrates*, Vol. 1, p. 424.
- 19 ‘Just as humans are the best animals when perfected, when separated from law (*nomos*) and justice they are the worst of all [animals] . . . they are the most unholy and the most cruel, and the worst with regard to sex and food (Aristotle *Politics* 1253a32-38)’.

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peculiarly human and really only of value and importance to humans.²⁰ In this sense law is like gold.

The companion then offers his definition. ‘What else would law be, Socrates, other than the things legislated? (313b6)’²¹ Perhaps this answer is not likely to seem peculiar, or problematic, to us today. However, from the Greek perspective it is peculiar, because it is not grounded in anything permanent or sacred. That is to say, it is essentially relativistic, which means that it has no necessary relationship to justice. Justice for the Greeks was vouchsafed by the will of the gods, Zeus in particular. This is evident in the use of oaths in courts of law and treaties.

Socrates does not draw attention to the implications of the companion’s definition. To do so would lead to a discussion of other things (e.g. the distinction between nature and convention)²² and detract from examining law. Rather, he asks a question that aims at revealing that the companion’s definition is lacking and does not fully account for the phenomenon law as it presents itself to us. He asks, ‘Indeed, does speech also seem to you to be the things spoken, or sight the things seen, or hearing the things heard (313b7)?’ To clarify what he means by this question he asks whether the things seen and heard are not revealed to us by the senses. This suggests that the things spoken, seen, and heard are not just relative or arbitrary constructs of our imagination, they are based on the world we live in, the way things are by nature. Speaking, seeing, and hearing are not conventions, they are natural: they are aspects of human nature.

By suggesting law is akin to things revealed by the senses, Socrates seems to suggest something like a natural basis for law.²³ Socrates then asks, ‘Thus, surely now indeed if one should ask us, “Since by law the things legislated are legislated, by law’s being what are they legislated?” Whether by its being some perception or a revelation? (314a6-9)’ The implication is that there must be something more fundamental that law depends on or is derived from,

20 Aristotle famously argues that man differs from the other animals by his capacity for speech (*logos*), which allows for debate concerning the good and bad, advantageous

and disadvantageous, and just and unjust (*Politics* 1253a1-18). In this sense, man is the only moral animal, i.e. capable of fashioning, understanding, and obeying laws in contradistinction to simply following sentiment or natural impulses.

- 21 Grote notes some similarity between the companion's definition and some lines referring to law in Herodotus and Pindar (425, note d).
- 22 The word nature (*phusis*) never appears in the *Minos*, probably for this reason, just as the term *nomos* does not appear in the *Hipparchus* for similar reason.
- 23 Much has been written on this question of natural law. For a recent discussion see Lewis, 'Plato's *Minos*: The Political and Philosophical Context of the Problem of Natural Right'.

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something that is either natural and can be perceived, or Socrates now adds the possibility that there is a divine basis by which law is revealed. Socrates continues, 'Just as the things learned are learned by science revealing them, or by some discovery, just as the things discovered are discovered as for example healthy and sickly things by medicine and what the gods intend, as the prophets say, by divination. For, presumably, art is for us a discovery of the things done. Isn't it?' Socrates conflates science and prophecy (in the sense of knowledge of the intention of the gods) as though they are the same type of knowledge, as though they are equally reliable and trustworthy.

To an extent the Greeks understood art (*technē*) as an imitation of nature or what completes nature.²⁴ For example horticulture or farming bring to fruition what was intended by nature but not always completed and perfected, fruits and vegetables. In this sense, Socrates is suggesting law must be something like art that has its basis in nature, or like prophecy, which apparently works in a similar way and has its basis in the divine. Either way there would seem to be a sort of science of law, jurisprudence.

The question that Socrates does not draw attention to by conflating prophecy and science is whether law is a science like medicine, based strictly on an understanding of human nature, or a knowledge like divination based on what is not accessible by nature but only what the gods reveal to us. If it is more or mostly like divination, and it should turn-out that prophecy is problematic, then it seems there could be no real or precise science of law. However, either way Socrates is suggesting legislation is a remedial art, i.e. something that remedies. Medicine addresses ailments of the body, religion or prophecy addresses ailments of the soul and/or the disfavor of the gods. Both doctors and prophets treat dying men, men who are mortal and must sooner or later die. Either way it is a sickness unto death.²⁵

When asked which law would be more like, either a science or prophecy, the companion brushes the question aside and returns to his understanding polis, *The Journal for Ancient Greek Political Thought* 32 (2015) 53-72

of law. ‘I’m afraid what you are asking, this whole thing law, is the doctrine (*dogmata*) of the city (314b10-c1)’. Socrates has apparently failed to make the companion question the inadequacy of his definition. Nonetheless, his qualifying remark,

24 Aristotle *Physis* 194a20-25, 199a18-19.

25 Lewis observes that the arts of divination and medicine ‘are an attempt to manage the world, but they are (however distinct) similarly limited in that they cannot control chance (‘Plato’s *Minos*: The Political and Philosophical Context of the Problem of Natural Right’, p. 24). He offers an interpretation of the passage along somewhat different lines (cf. pp. 24-5).

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‘I’m afraid (literally, “It is in danger of”)’ perhaps indicates that he is somewhat aware that his definition is wanting, particularly in regard to its irreverence.

Socrates replies, ‘Opinion (*doxa*), a political one, you say law is, as it seems (314c2)’. The companion agrees. However, he had not gone so far as to say that law is merely opinion (*doxa*). Rather, the companion had said it was a decree or doctrine (*dogma*), which is at least an authoritative opinion.²⁶ Thus, Socrates makes the companion’s definition even more relativistic, arbitrary and therefore radical than the companion intended. Since the companion concurs without question, it seems to indicate that Socrates has merely brought to light the implications of what the companion really believes about law or its logical conclusion. However, it may also in part convey an aspect of Socrates’ own understanding of law, which he would prefer not to say but attribute to the companion.

Socrates replies, ‘Indeed, perhaps (*isōs*) you speak nobly (314c4)’. Socrates’ answer indicates that the companion’s definition ‘might (*isōs*)’ capture something essentially true about law. However, it avoids the problem Socrates was trying to explore, the need for a non-arbitrary basis for law.²⁷ Consequently, Socrates turns to a different line of questions to try again to change the companion’s opinion about law by undermining its relativistic and arbitrary implications. He asks whether law, being an opinion, would be a useful or worthless one (314e2). The companion agrees that it would be a useful one and then that a useful opinion is a true opinion (314e10). In this way, Socrates brings the companion to conclude that law must be based on truth and also justice to some extent (314e4). Therefore, it seems law is not simply arbitrary or simply an opinion. To this effect, Socrates could have just asked whether or not there are good and bad laws, which would lead to the conclusion that some laws must be polis, *The Journal for Ancient Greek Political Thought* 32 (2015) 53-72

better, i.e. more true and just than others. However, by avoiding this question, and by reaching the same conclusion in a round about manner, Socrates avoids drawing attention to the fact that there is something higher than law to which law is subject – namely justice. That is to say, Socrates makes an argument within the law, a legalistic argument that avoids reasoning beyond the

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- 26 Lindberg makes note of this to some degree, although he relies on an English translation that does not make altogether clear the difference in the Greek terms ('The Oldest Law: Rediscovering the *Minos*', pp. 46-7.
- 27 Seth Benardete argues that the adjective nobly (*kalos*), which Socrates uses, as opposed to truly (*alēthēs*) or rightly (*orthos*), indicates a conclusion, 'which is general and succeeds in embracing a diverse set of things in one class'. However, 'it is not necessarily true', and, 'is a signal that a difficulty has been got round'. 'The Right, the True, and the Beautiful', *Glotta* (1963), pp. 54-62, p. 55.

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law, which protects the integrity of law. This is why the word justice (*dikē*) never occurs in this passage. This is like the American legal system based on precedent. One argues from within the law itself, as though it were not even possible that the law could be unjust. It discourages citizens from even raising the question of the justness of the law.

Prior to asking the companion whether some opinions are useful and others worthless (314c8), Socrates asked a set of questions about wisdom, justice, and the lawful. For example, 'Aren't the wise wise by wisdom (314c5)?' This series of questions associates justice and law with wisdom. When Socrates concludes that law and justice are noble and the companion agrees this follows from the relationship of justice and law with wisdom, which is assumed to be noble without argument. Therefore, what Socrates does is replace the criterion of justice to judge law with that of wisdom without ever raising the question of what we judge laws by. Had he raised that question, he would not have been able to substitute wisdom for justice. This argument has two effects. One, it proves the integrity of law by showing law is justified by something higher than law, namely wisdom, without drawing attention to the fact that there is something higher than law. Second, even to the extent that wisdom or the wise can judge the law, that standard is safer than justice. Everyone claims to know what is just, but few claim to be wise. By associating law more with wisdom than justice, Socrates makes law seem higher than justice.

Having now to some extent refuted, or at least confuted, the companion's definition of law, Socrates offers his own definition. 'Law wishes (or intends) (*bouletai*) to be the discovery of what is (315a2)'. This polis, *The Journal for Ancient Greek Political Thought* 32 (2015) 53-72

definition grounds law in something non-arbitrary. Curiously, it could also be a definition of philosophy since the philosopher intends or wishes (*bouletai*) to discover what is. At any rate, Socrates seems to have defined law in such a way that philosophy could not be at odds with it. Or perhaps as Lewis remarks, 'Law can represent a kind of image of philosophy, one that is untrue to philosophy's object'. Lewis goes on to say that laws' 'desire to be the discovery of "what is" does reveal something important: that human beings wish their political institutions to reflect something true about the world. A legal or political order that comes to be seen by citizens as a lie, based on falsehoods, cannot sustain itself'.²⁸ This underscores the present argument that Socrates is trying to reform the companion's understanding of law to mitigate this danger.

The companion doubts Socrates' definition, because the laws change. He asks why if law is 'the discovery of what is' we, we Athenians, are always

28 'Plato's *Minos*: The Political and Philosophical Context of the Problem of Natural Right', p. 28.

changing the laws (315a5). Socrates replies that law only intends or wishes the discovery of what is (315a6). Sometimes it falls short of the mark, which apparently accounts for variation. He then asks the companion whether or not some people use some laws and others others (315a8). The companion says they do and mentions the Carthaginian law of human sacrifice, since the Greeks do not practice human sacrifice. He also mentions the change in burial customs among the Greeks.

In a certain way these examples validate Socrates' definition of law.²⁹ They show that law is concerned with the highest things or gravest things: the sacred, death, and the will of the gods. Laws dealing with sacrifice address the gods, and laws dealing with burial address death. Laws about such things distinguish human beings from animals. 'Sacrifice denies that man is a god, burial denies that man is either a beast or carrion. Man is both body and soul, and there is a god. These two actions are the plainest evidence that law wants to be the discovery of what is . . . man is defined temporally through sacrifice and spatially through burial, since he says that some Carthaginians sacrifice their own sons to Cronos or Time (*Kronos*)'.³⁰ Nonetheless, Socrates cannot deny that laws do in fact change, which would imply they are imperfect. He turns to a different line of questioning to try to reassert the universal character of law and its

foundation in something permanent, i.e. he would like to argue that despite the fact that laws change there is something like a science of law.

He asks if the just is just and unjust unjust both here and everywhere, and he asks similarly about heavier and lighter things, and the noble and shameful. Although there are just, unjust, noble, and shameful things everywhere, they are not necessarily the same things. Weight, however, is universal. Therefore, to the extent justice conveys notions of equality and measure it seems similar in universality to weights, which is what the companion is led to conclude. However, Socrates' choice of places may suggest he really believes justice is more variable than he indicates to the companion. He asks whether the just is just and unjust unjust both in Greece and Persia (316a3) and whether the heavier is heavier and lighter lighter both in Carthage and Lykai (316a7). While weight may not differ much in these places, they are radically different in respect to what they consider sacred and divine, which calls our attention to how the conception of the sacred and divine influences and relates to a city's conception of justice. Justice is more variable than weights, because it depends

29 Strauss, 'On the *Minos*', p. 68.

30 Benardete, *Plato's Laws: The Discovery of Being*, p. 140. Cf. Lewis, 'Plato's *Minos*: The Political and Philosophical Context of the Problem of Natural Right', pp. 29-30.

on or is influenced by an understanding of the divine and sacred things, which is more particular than weights and measures.

Jurisprudence

Having ostensibly asserted the universality of justice, Socrates turns to a line of questions implying that, or examining the concept of, law as a science. He draws an analogy between legislation, medical prescriptions, farming techniques, culinary art, and statecraft. Perhaps these analogies show different aspects of what a science of law would need to entail to be really scientific. For example medicine heals sickness and is akin to criminal laws, crimes being like a sickness of the body politic. Farming regulates and cultivates necessities, namely nourishment, which is akin to civil laws that order the body politic such as regulating commerce and infrastructure. Gardening goes beyond the necessary and cultivates beauty, e.g. flowers. It would perhaps be akin to laws pertaining to the adornment

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of public buildings and works, temples, sacrifices, festivals for the gods or theatrical productions.³¹

Culinary art is peculiar. Socrates qualifies it, unlike the others, adding ‘as they say’ to the question of whether there really is such an art. This reminds us of Socrates’ argument in the *Gorgias* that rhetoric is not really an art but just a sort of pandering to the passions like cooking (462e4). Further, the object of culinary art is meats or relishes (*opson*) (316e9). It is the same word Glaucon uses in the *Republic* when he objects to the city of utmost necessity, or the ‘true city’ as Socrates called it,³² because they have their feasts without relishes (*opson*) (372c2), which leads to the formation of the feverish city. If this analogy is meant to imply certain types of laws, it is hard to say what kinds of laws these would be. Perhaps they would be the sort that promote luxury and vice. Perhaps more a perversion of law than good laws and yet somehow still laws because of the nature of law or perhaps necessary due to the perversion, defections, or simply limitations of human nature like the kosher laws of the Old Testament if humans were originally intended by God to be vegans or vegetarians.

31 Cf. Aristotle *Politics* 7.13-15, 8.5-7.

32 Why is the city of utmost necessity the ‘true city’ (372e8)? Perhaps because it does not need the ‘noble lies’ of the *kallipolis*, which is because unlike the *kallipolis*, and most all other actual cities, it does not presume to address or supply anything beyond the needs of the body: it does not address the soul.

Finally, Socrates asks about the art of statecraft itself whose practitioner is the ‘king and good man’ (317a9). Thus, in all Socrates gives five analogies culminating in statecraft, which he seems to invite the companion to conflate with legislation, as well as inviting or tacitly suggesting that each is just as much a knowable, reliable skill or science as farming and medicine. However, they not only vary according to the degree of their really being like a science, Socrates has also arranged them so that the analogies ascend from the remedial, criminal law and medicine, to the beautiful, horticulture and holy laws, and then finally to the excessive and exuberant, culinary.

Socrates then turns to a different set of analogies with a different order. Perhaps the challenge is to understand the order of this new set, what it teaches about law that the other set did not, and what is its relationship to the other set. Socrates compares legislation to farming, lyre playing, athletics, shepherding, and kingship. Both this set and the previous set of polis, *The Journal for Ancient Greek Political Thought* 32 (2015) 53-72

analogies culminate in kingship. The difference with this set seems to be that all these arts aim at a type of measure or proportion. For example, the farmer aims at the right proportions of water, sunlight, and soil for crops. The lyre-player aims at the right proportions of sounds, i.e. notes, to make harmonies. The athletic trainer aims at the right types and amounts of exercise, nourishment, and rest to obtain proper portion and measure in the body. The shepherd seeks the right proportions of land, water, etc. for his flock. Finally, the king, it seems, seeks the right kinds and amounts of activities for the good of his subjects. Measure and portion must in a sense also be the aim of a science of law, properly understood.

Yet, just like the first set of analogies, this second set is heterogeneous, qualitatively different as to the type and degree of measure and portion sought among the arts. In fact, there is a sort of hierarchy like the previous set. A farmer cannot attend to the needs of each plant individually as well as a musician can each note. The athletic trainer is wholly fixated on perfecting a single body. Further, the athletic trainer, like the gardener, looks beyond the necessary to the beautiful or noble (*kalos*). The shepherd or cowherd is a descent like cooking. They cannot tend to the needs of each sheep individually. Further, they seek the sheep's good chiefly as instrumental to their own, as Thrasymachus points-out in book one of the *Republic* (343b). Last is kingship, perhaps even more dubious than shepherding. First, humans are more complex than sheep. They have more varied desires and abilities, which make them more difficult to manage. As Lutz puts it, 'At best, the kingly art makes laws that govern the generality of citizens'.³³

33 'The *Minos* and the Socratic Examination of Law', 997.

Further, sheep and cows are not ruled by other sheep and cows but by a higher, more intelligent species. Human beings, however, are ruled by other human beings. Finally, like shepherds human rulers do not always rule for the good of their subjects but often simply for their own good, which is sometimes mutually exclusive to that of their subjects. Arguably, there is simply an irreconcilable tension between the good of the ruler and the good of the ruled.³⁴ Consequently, in speaking of shepherding Socrates adds the adjective *kratos*, strong, implying a degree of force and compulsion necessary for these last two arts. Thus, a true science of law would seem to look to measure and portion in a variety of ways, as do these different arts, and apparently with varying degrees of success or precision. Owing to the difficulty of all these demands, we come to see not only the many components a science of law would entail, but more importantly the difficulty and complexity, not to say impossibility, of trying to rectify all these different aims.

The companion is perplexed more than persuaded by the suggestion that there is a science of law. Socrates has still not succeeded in reforming his opinion of law. Consequently, in the final part of the dialogue Socrates turns to the story of Minos. Presumably his aim is to teach the companion what he could not grasp through science or argument alone and impart to him an opinion of law, which is perhaps in a certain way a closer semblance of truth than the sophistic opinion he had at the outset. However, it may also reveal something about Socrates ultimate thoughts on the complexities and problem of law.

Minos

Socrates begins by asking, ‘Can you tell me who of those long ago became a good lawgiver in the flute-learning laws (318b1-2)?’ Music seeks harmony or measure and therefore seems to have a certain kinship with law. Socrates calls to mind the ancient musicians Marsyas and his disciple Olympus. Marsyas was a satyr renowned for discovering the flute, which was actually invented by Athena. Marsyas happened upon it. Since the flute was enchanted by Athena, it played beautiful music. The music was so beautiful that the peasants claimed he rivaled Apollo. Consequently, he challenged Apollo, lost, and was skinned alive.³⁵

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34 Socrates seems to concede this to some degree when attempting to answer Glaucon's objection that it is unjust to make the philosophers rule (*Republic* 519d8-10), consider 520a5-d5.

35 Apollodorus I.4.2; Diodorus Siculus III.58-9.

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The myth seems to teach that what appears to be of human invention is actually of divine origin. Second, when humans attempt to challenge the gods, they fail, because their art lacks speech or reason (*logos*). Marsyas lost because Apollo began to sing, which Marsyas could not do while playing a flute. Apollo's skill was literally accompanied by *logos* unlike Marsyas'. Socrates prefaces his discussion of ancient legislation with music, because music seems to be such a divine art it is easier to believe that it was passed down by the gods, i.e. it helps establish the precedent that the arts are learned from the gods which will then be applied to legislation.

Also noteworthy, as Lewis points out, 'Socrates himself was compared not only to a silenus or satyr, but specifically to Marsyas, by Alcibiades in the *Symposium*'.³⁶ What is the similarity between the two? Lewis suggests, 'Marsyas and Socrates could both be seen as hubristic in their challenge to a god'.³⁷ This hubris particularly comes to light in thinking through this last section of the dialogue, i.e. the degree to which Socrates reinterprets, changes, and uses Homer, Hesiod, and the gods to vindicate his understanding of law.

Socrates then asks, 'And who is mentioned of the kings long ago that became a good lawgiver, whose customs, still even now, remain as being divine (318c1-3)?' From the example of flute playing Socrates established that the older is better and the oldest is the divine. Therefore that of the gods or that which is related to or sanctioned by the gods is the best. Since the companion cannot say, Socrates asks more specifically who of the Greeks has the oldest laws. The oldest Greek laws originated in Crete, and the oldest Cretan kings were Minos and Rhadamanthus. The companion replies that although the tragedians say Rhadamanthus was a good man Minos was harsh and savage. Socrates denies that the tragedians speak correctly, because they are contradicted by the oldest poets Homer and Hesiod. The companion does not know what Homer and Hesiod said about Minos. Therefore, Socrates offers to tell him, 'Lest you blaspheme like the many (318e6)'.

Socrates' main proof for the good rule and laws of Minos is a quote by Homer from the *Odyssey* 19.178-179. 'In Cnossos was a great city, and there Minos | Reigned king nine years, beloved of great Zeus'. By 'beloved (*oaristēs*)' Socrates says Homer refers to the fact that Minos visited Zeus

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in his cave every nine years and was educated by him. Zeus, Socrates says, was a ‘sophist (*sophistēs*)’

36 ‘Plato’s *Minos*: The Political and Philosophic Context of the Problem of Natural Right’, p. 39.

37 ‘Plato’s *Minos*: The Political and Philosophic Context of the Problem of Natural Right’, p. 40.

and therefore capable of teaching others wisdom.³⁸ Minos learned from Zeus how to make good laws and rule well. Thus, Socrates argues, in effect, that Minos was a prophet-king who learned from Zeus, the highest god, the god of justice, how to legislate and rule men.

The line Socrates quotes from the *Odyssey* is said by Odysseus in a story he tells to his wife, Penelope. At this point in the *Odyssey*, Odysseus has returned home and is disguised as a beggar to investigate his house. He wants to find out who has been loyal to him and who has not. Odysseus tells his wife he is from Crete, once met Odysseus, and has heard he will soon return home. Of course, as far as we know Odysseus was never in Crete. In fact, considering that Odysseus was a renowned liar and that the Cretans themselves were renowned liars, Odysseus’ story is suspect to say the least. So suspect that he probably wants his wife to see through it and recognize him so she can help him take his vengeance on the suitors who have ruined his home and harassed his wife. I think Socrates too, like Odysseus,³⁹ means this reference as a sort of clue for the deeper meaning of this last part of the dialogue, among other things indicating that his story about Minos is fabricated.⁴⁰

Socrates continues by saying, ‘And Rhadamanthus was a good man for being educated by Minos. Nevertheless, he had not been educated in the whole art of kingship, but service to the king the sort that presides in courtrooms (320c1-2)’. Socrates asserts that Minos is superior to Rhadamanthus, because Zeus appointed Minos to be a judge in Hades but not Rhadamanthus (319d3). Yet, in the *Gorgias* Socrates says Zeus appointed both brothers judges, only that he allowed Minos to make a final decision when Rhadamanthus was at a loss since he was the elder (524a). Further, according to Strabo⁴¹ Rhadamanthus was actually first to visit Zeus in his cave and bring back laws to Crete, which

38 The word ‘sophist’ can be used simply as a term of praise, e.g. Herodotus 1.29, 2.49, 4.95; Isocrates 15.235. However, it is more likely that it is meant to remind us of the

various sophists Socrates converses with in other dialogues whom he reveals not to be as wise as they claim.

39 Cf. *Hippias Minor* 364b.

40 Mulroy comments, 'In my opinion, Socrates is depicted as making up this particular piece of mythology; it is a transparent *'jeu d'esprit'*, a tall tale at his gullible companion's expense ('The Subtle Artistry of the *Minos* and the *Hipparchus*', p. 116), and subsequently, 'The impression that the story of Minos' education in Zeus' cave is the product of Socratic whimsy is reinforced by the fact that there is no trace of any other origin for it (p. 118)'. The labyrinth which Minos used to trap Athenian citizens was built by Daedalus, an Athenian sophist and inventor, who also gave Ariadne, Minos' daughter, the clue to escape the labyrinth, which she gave to Theseus.

41 *The Geography of Strabo* X.4.8.

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is also indicated by Apollodorus,⁴² Diodorus Siculus,⁴³ and Aristotle.⁴⁴ Also, Rhadamenthus, not Minos, is mentioned by Homer as being in the Elysian Fields, which Pindar says is on account of his prudence and uprightness.⁴⁵ Rhadamanthus then, presumably, bequeathed the custom to Minos who revised the laws, but did not rule as wisely or justly as his brother.⁴⁶ It is likely then, contrary to Socrates' alleged story, that the oldest was actually the rule of Rhadmanthus: the rule of Minos was a decline.⁴⁷ The other piece of evidence quoted by Socrates is from Hesiod, a work we have only in fragmentary form called the *Catalogue of Women*.⁴⁸ There is no way to know whether it really refers to Minos or Rhadamanthus. Why would Socrates reverse the order of the brothers?

According to Socrates' explicit argument, the oldest laws are derived from the oldest conception of the divine, which in turn is given by the oldest and greatest poet, Homer. Yet, as it seems to me Socrates is not simply interpreting Homer, but using Homer. Perhaps the reversal suggests that despite Socrates' explicit remarks indicating the oldest is the best, it is in fact Socrates' newer teaching that is best: Plato is an improvement on Homer. Differently said, Socrates is in a way like Minos and Homer like Rhadamanthus. Just as Rhadamanthus claimed to be taught by Zeus so did Homer claim divine inspiration from the Muses. Socrates then uses his teaching from Homer, as Minos did from Rhadamanthus. Of course, Socrates is not simply passing on the teachings, he is altering, improving (or corrupting) it, all the while pretending that the new is the old. He is covertly doing in the *Minos* what he explicitly says must be done in the *Republic*: correcting the teachings of the poets.⁴⁹

42 *Bibliotheca* III.1.2.

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- 43 *Bibliotheca* IV.60, V.79.
- 44 *Constitution of the Cretans* (Fr. 611, 14, Rose).
- 45 *Odyssey* 4.564; for Pindar see *Olympian Odes* ii.75, *Pythian Odes* ii.73.
- 46 Cf. Apollodorus III.1.3; Herodotus VII.169; Plutarch *Life of Theseus* 16; Homer *Odyssey* 4.564.
- 47 For a somewhat different account of the stories of Minos and Rhadamanthus and how they play out in the *Minos* see Lewis, 'Plato's *Minos*: The Political and Philosophic Context of the Problem of Natural Right', pp. 41-48.
- 48 *Catalogue of Women*, fragment seventy-four. The first line is slightly altered. Two words are changed. The original, as we have it, reads: 'Who was held (*echō*) most kingly of deceased (*katathānos*) kings'. Some scholars contend this work is spurious.
- 49 This will to some extent be the task of the nocturnal council mentioned in books ten and twelve of the *Laws* (see 965a, 951e, and 986c). This refashioning of the traditional Greek theodicy seems to be the theme of the first part of the *Epinomis*.

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Yet this does not explain why he has to make Minos, of all ancient legislators, a hero who was such a notorious figure for Athenians. This seems to be the real mystery that Socrates goes to lengths to hide.⁵⁰ Perhaps the clue can be found by considering more carefully the sequence of analogies in the central part of the dialogue. In the middle section of the central part the sequence of analogies is: medicine, agriculture, gardening, cooking (*magārikos*), and statecraft. Socrates then summarizes and repeats these analogies but *changes the order*, making cooking the central analogy (317b9). In part the centrality of cooking suggests the spurious nature of law as a true art or science just as Socrates argues in the *Gorgias*. But *magārikos*, the word for cooking, can also mean butchery, which cannot help but remind us of the meal that Minos made of the tribute that Athens was forced to pay by law, which in turn reminds us of an aspect of law on which the *Minos* is almost entirely silent, namely coercion. Lindberg notes, 'The *Minos* contains no discussion of punishment or of the coercive power of law'.⁵¹

While explicitly true, I would suggest that Socrates does, nonetheless, tacitly draw attention to this aspect of law. The subtle suggestion that law, or the science of law, is in a fundamental way like that of 'butchery' (*magārikos*) indicates that all law qua law has a coercive element and that it aims at its own good, or the good of the city, to the exclusion of the citizen as a human being. This is directly manifest in Minos' law, which is coercive and directly opposes the good of those sacrificed with the good of Minos' and his city. In the final analysis Socrates indicates tacitly what is made more explicit in the famous analogy in book seven of the *Republic* where citizens are envisioned as slaves of the *nomoi* held in bondage below

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ground to the exclusion of the truth and their own good or the good of philosophy.

Socrates concludes the dialogue by asking the companion, ‘Whatever are those things the good lawgiver and shepherd, by distributing them to the soul, makes it better (321d5)?’ Because the companion cannot say, Socrates rebukes him. ‘But yet, at any rate, it is shameful for the soul of each, while not knowing what is manifest therein the good and paltry, although things pertaining to the body and other things have been examined’. Why does Socrates rebuke him, and why does the companion acquiesce? It seems that although the companion has not really understood Socrates’ definition of law, he has understood

50 Lewis argues, somewhat to the contrary, that ‘none of these elements need conflict with one another [i.e. the different versions of stories about Minos]. They can all be seen to reveal truths not just about Minos, but about law and politics more generally. (‘Plato’s *Minos*: The Political and Philosophic Context of the Problem of Natural Right’, pp. 44-5.)’

51 ‘The Oldest Law: Rediscovering the *Minos*’, p. 46.

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enough by the end of the dialogue to be led to believe that his definition was not only inadequate, but shameful. Therefore, the end of the dialogue seems to show that Socrates has at least succeeded in moderating the potentially dangerous and subversive opinion of law the companion had at the outset.

Thus, the *Minos* teaches many important aspects of law and properly understood contributes greatly to understanding Plato’s political thought. In the first part of the dialogue it becomes clear that the companion’s opinion of law has been influenced by the teachings of sophists. Consequently, he has formed a low opinion of law, not associated with anything noble, divine or sacred. In the middle part of the dialogue Socrates attempts to reform his opinion of law by showing him the inadequacy of his definition. This consists of an argument suggesting there is a science of law. This attempt is not very successful. However, carefully considered, it reveals many aspects, problems, and complexities of what a science of law would entail. In the final part of the dialogue Socrates turns to myth to reveal a dark truth about law, esoterically. He argues that present day Greek laws are derived from the oldest Greek laws, which were the best and most just, because they were revealed and taught by Zeus himself to the infamous king Minos. Although Socrates does not succeed in teaching the companion the complexities involved in the question what is law, he does succeed in moderating the relativistic opinion of law he

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adopted from sophists and leaves him with an opinion of law that will make him a better citizen and is better for the city.

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